IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.672/2006

Reserved on.21.6.2007

Decided on. July 12, 2007

The Chairman Baba Balak Nath Trust. …Petitioner.

Versus

Hoshiar Singh and another. …Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No.*

For the petitioner : **Mr. K.D. Sood, Advocate.**

For the respondent No.1. **Mr. Onkar Jairath, Advocate.**

Rajiv Sharma, J.

A challenge has been laid to the award dated 16.5.2005 passed by the Labour Court-cum-Industrial Tribunal, Dharamshala in reference No.143/2001.

The brief facts necessary for the adjudication of this petition are that after the conciliation proceedings had failed, the State Government made the following reference on 17th July, 2001 to the Labour Court-cum-Industrial Tribunal, Dharamshala:

> **"Whether the retrenchment of services of Shri Hoshiar Singh, workman S/o Sh. Krishan Kumar, Village Jarjari, PO Realli, Teh. Barsar, Distt. Hamirpur by Chairman, Baba Balak Nath Temple Trust, Deot-Sidh, Teh. Barsar, Distt. Hamirpur, Sub Divisional Officer Barsar (Civil) Sub Division, Barsar, Distt. Hamirpur vide retrenchment order dated 06.11.1998 complying section 25 (F) and without complying section 25 (N) of the**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

Industrial Disputes Act, 1947 w.e.f. 16.12.1998 is legal and justified. If not, to what relief of back wages, seniority, service benefits and amount of compensation the above workman is entitled to?

In sequel to the reference made by the State Government, the respondent (hereinafter referred to as the workman) had filed the statement of claim before the Labour Court. He had primarily stated in his statement of claim that he was employed as Bijli Karamchari (Electrician) on 10.3.1997 and his services were terminated with effect from 16.12.1998 vide notice dated 6.11.1998. He had also stated that there was violation of the principle of 'last come first go' since the persons junior to him were retained at the time of his retrenchment with effect from 16.12.1998.. The management i.e. petitioner-temple had filed reply to the claim petition and denied the contents of the same. The Labour Court had answered the reference in the affirmative vide award dated 16.5.2005.

Mr. K.D. Sood, Advocate appearing on behalf of the petitioner had strenuously argued that the award dated 16.5.2005 is not sustainable in the eyes of law.

Mr. Onkar Jairath, Advocate appearing on behalf of the workman had supported the award dated 16.5.2005 passed by the Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala.

I have heard the parties and perused the record.

The workman had appeared as PW-1 before the Labour Court and had categorically stated that he was engaged as electrician with effect from 10.3.1997 and his services were terminated after retaining his juniors, namely, Kashmir Singh, Vijay Kumar, Vikram Jeet Singh, Ravi Dutt Sharma etc. Sh. Raj Kumar, Junior Assistant had appeared on behalf of the management as RW-1 and had stated that the services of the workman were terminated after completing all the codal formalities.

He had admitted in his cross-examination that the work, against which the workman was employed, was of regular nature. He had also admitted that more than 121 persons were engaged by the management, but he had shown his ignorance about the fact that section 25-N of the Industrial Disputes Act, 1947 was complied with or not.

The Labour Court had proceeded with the matter on two premises. Firstly, that there was violation of section 25-F of the Industrial Disputes Act, 1947. Since one month notice in accordance with law was not served upon the workman. Secondly, since more than 121 workmen were engaged by the management, the notice under section 25-N of the Industrial Disputes Act, 1947 was required to be served. The Labour Court had come to a just conclusion that the workman had received the notice on 1.12.1998 and it did not fulfill the condition of notice as laid down in clause (a) of Section 25-F of the Industrial Disputes Act, 1947. The Labour Court had come to the right conclusion that since more than 121 workmen were engaged by the management, notice under section 25-N of the Industrial Disputes Act, 1947 was required to be issued to the workman. Admittedly no notice under section 25-N of the Industrial Disputes Act, 1947 was issued to the workman at the time of his retrenchment. The management had not controverted the statement made by the workman (PW-1) that persons junior to him, namely, Kashmir Singh, Vijay Kumar, Vikram Jeet Singh, Ravi Dutt Sharma etc. were retained at the time of retrenching his services. The reasons assigned for the retrenchment was that the work was not available. It has come in the statement of RW-1 that the work, against which the workman was engaged, was available at the time of retrenchment.

The upshot of the above discussion is that the Labour Court had come to the just conclusion that the retrenchment of the workman with

effect from 16.12.1998 was illegal. Similarly the Labour Court had come to the right conclusion that since more than 121 workmen were employed by the management, the workman was entitled to the protection of section 25-N of the Industrial Disputes Act, 1947. The management had only issued the notice to the workman under section 25-F of the Industrial Disputes Act, 1947, which was also defective as the same was not in accordance with law. The reasons assigned for effecting retrenchment of the workman with effect from 16.12.1998 were not factually correct as the work against which the workman was engaged, was still available. The management had not denied that the workmen junior to the workman at the time of his retrenchment i.e. 16.12.1998, namely, Kashmir Singh, Vijay Kumar, Vikram Jeet Singh, Ravi Dutt Sharma etc were not retained.

Accordingly there is no merit in the writ petition and the same is dismissed with no order as to costs.

(Rajiv Sharma), Judge

July 12, 2007
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